

Massachusetts Department of Conservation and Recreation (DCR) &
Massachusetts Executive Office of Energy and Environmental Affairs (EOEEA)

Off-Highway Vehicle (OHV) Enforcement and Education Working Group

Minutes – September 14, 2007 (Meeting 2 of 4)

Attendees: George Agganis, Captain, Office of Environmental Law Enforcement; Kenneth Anderson, President, MA All Terrain Vehicle; Roger Arduini, Deputy Director of Enforcement, Office of Environmental Law Enforcement; Ellen Arnold, Friends Group Alternate; Rebecca Barnes, Western Trails Coordinator, DCR; Bruce Bennett, Major, Office of Environmental Law Enforcement; Gary Briere, Bureau of Recreation Chief, DCR; Jack Buckley, Deputy Director, Division of Fisheries and Wildlife; Matt Dudek, Joint Committee on Transportation; Judith Eiseman, MA Association of Conservation Commissions/MA Land Trust Commission; Frank Frey, MA Coordinator, New England Trail Riders Association; Priscilla Geigis, Director, State Parks and Recreation, DCR; Justin Gilardi, Northeast ATVers; Craig Givens, Department of Environmental Protection; Sharl Heller, Friends Group Representative; Lewis Howe, Department of Public Health Injury Surveillance Program; Mike Labossiere, The Trustees of Reservations; Jack LaLond, DCR; Maria McKenna, Department of Public Health Injury Surveillance Program; Janet Morrison, Massachusetts Land Trust Coalition; Robert O'Connor, Director Watershed Policy, EOEEA; Heidi Ricci, Senior Policy Analyst, Massachusetts Audubon Society; Jim Sherman, President, New England Trail Riders Association; David Shook, Berkshire Trails Council; Jennifer Stowe, Bureau of Ranger Services, DCR; Eleni Varitimos, Chief of Staff, Senator Steven Badour; Chris Williams, Bureau of Ranger Services, DCR; Jason Zimmer, Southeast District Manager, Division of Fisheries and Wildlife; Jack LaLond, DCR

Logistical Support – Lorraine DellaPorta, Massachusetts Office of Dispute Resolution; William Logue, Facilitator, Logue Group; Anita Wysocki, DCR Bureau of Recreation

Welcome and Meeting Purposes

Bill Logue presented an overview of the agenda, reviewed meeting and process ground rules and described the goal for this meeting which is to determine concept areas where parties involved are 1) in agreement, 2) not in agreement and 3) where we need additional discussion to come to agreement. We are reminded that we will most likely not reach 100% agreement in all areas, but that we need to strive for compromise that we can support to some degree. The ultimate goal at the end of our meetings is to present a group recommendation regarding OHV enforcement to EOEEA Secretary Ian Bowles. To reach that goal we must focus on Ch. 90B and 90C, not areas where riding is permitted. The group will end at the beginning of the public process. Members of this group should share info with others not at the table in order to gain the broadest communication and discussion of the issues.

Recap of 8/10/07 Meeting , Work Done Since 8/10, New Materials and Group Members

Gary Briere reiterated that the purpose of this OHV Working Group as requested by DCR Commissioner Rick Sullivan is to identify strategies and solutions to address growing concerns regarding illegal and unsafe use of Off Highway Vehicles. DCR has added the work of this group to its website and invited public comments on the subject which it will share with working group members. Meeting minutes are posted on DCR website at:

<http://www.mass.gov/dcr/recreate/ohv/ohvworkgroup.htm>). Gary reiterated that changing state law requires a prescribed process which includes public hearings. Those who are not present in the working group will have numerous other opportunities through the legislative process to make suggestions and state concerns. These meetings are not a decision making process, but a means to facilitate discussion amongst affected parties that we might achieve a consensus regarding enforcement issues in support of the legislative process.

It was acknowledged that not all parties are present and represented on the Working Group, such as municipal, utility and private land owners. In an effort to keep the group manageable, the parties most directly affected have been asked to participate. In turn, all who are members of the OHV working group are encouraged to share information about the meetings, encourage others to monitor our progress via the DCR Website as well as provide comment via the website. A notebook with all submitted comments to date was made available at the meeting. If committee members would like to receive copies of the comments via email, please submit your request to anita.wysocki@state.ma.us.

Bob O'Connor reported that he is pleased with the progress we have made so far and is confident we will continue with a similar outcome and process achieved regarding Chapter 61 statutes. Remarkably, due to the discussions and work done ahead of time on Chapter 61 statutes, the bill passed in six months and he anticipates similar success from this process.

Heidi Ricci expressed her concern that an email she had sent to group members was not included in the handouts. The information included lists of parties not included in this process and environmental issues of concern. Copies of the documents will be provided at the next meeting.

Priscilla Geigis, DCR Director of State Parks and Recreation expressed her thanks to all members for their time and commitment to this important issue.

A few first time participants in the group were identified: Craig Givens, Department of Environmental Protection; Lewis Howe, Department of Public Health; Matt Dudek, Joint Committee on Transportation; Eleni Varitimos, Massachusetts Senate; Sharl Heller, Friends Group Representative and Mike Labossiere, The Trustees of Reservations.

New Materials Distributed

Minutes from OHV Working Group meeting on 8/10/07; minutes from NOHVCC meeting on 9/11/07; HB810-An Act to Prohibit the Sale of Recreational Vehicles Containing Two Stroke Engines; Chapter 21A-Fines for Categories of Violations; Ch 90B Motorboats, Other Vessels and Recreational Vehicles; Ch. 90C-Procedure for Motor Vehicle Offenses; 323 MCR 3.00-The Use of Recreation Vehicles and Snow Vehicles; HB3617-Relating to Establishing a trail

maintenance program within the Department of Conservation and Recreation; HB3592-An Act Relative to Child Safety on ATVs; Ch. 266 Section 121A-Crimes Against Property; spreadsheet-State by State Off-Highway Vehicle Regulations ; spreadsheet – OHV law and suggested changes, submitted by Janet Morrison of MA Land Trusts Coalition; Revised OHV Enforcement Working Group members; Northeast ATVers comments regarding Ch. 90B and 90C.

Presentations

Various parties were invited to make presentations with the goal that the group would gain broader understanding of different perspectives surrounding OHV safety and other issues.

Becky Barnes – Meeting with National Off-Highway Vehicle Conservation Council (NOHVCC)
Members of the OHV Working Group were invited to attend a meeting with Jack Terrell of the NOHVCC on Tuesday, 9/11. Unfortunately, due to scheduling conflicts, Mr. Terrell was unable to attend our meeting on 9/14. However, it was determined that the information to be gained from a national perspective was something we should pursue. NOHVCC is one of the largest OHV organizations with a mission to educate and promote responsible use of recreational vehicles. Minutes of the meeting were distributed and the meeting summarized by Becky.

NOHVCC is a non-profit organization which receives funding from various federal agencies, the recreational trails program and the OHV industry. Their mission is to provide information and education to individuals, groups and state agencies to encourage responsible OHV recreation, resource protection and safety. During the presentation on Sept. 11, the group discussed encouraging participation in clubs to facilitate education and responsible riding; expanding local law enforcement; monitoring the technological changes in the OHV market ; fostering cooperative efforts between dealers/clubs/land managers; increasing penalties for OHV violations in MA; and making the registration process more convenient. NOHVCC is currently involved in national discussions regarding size and age limitations for OHV's. NOHVCC believes that management must include education, evaluation, engineering and enforcement to achieve the safety and resource protection goals. Copies of the NOHVCC PowerPoint slides were available at the meeting.

Janet Morrison – Massachusetts Land Trust Coalition

A spreadsheet was distributed that details suggested changes for Ch. 90B. Suggestions highlighted include: mandatory registration; age restrictions limiting riders under the age of; requiring liability insurance for bodily injury, property (gates, locks, etc.) and environmental damage; authorizing environmental police and municipal police to stop riders on public ways with or without probable cause; designating public road crossing areas; increasing penalties with fines dedicated to enforcement and repair of environmental and property damages; and utilizing Ch. 266 Sec. 21A regarding trespass of property.

Maria McKenna – Department of Public Health, Injury Surveillance Program

The Injury Surveillance Program tracks various injuries to children under 16 years of age that require acute hospital care, out patient care or cause death. ATV Statistics shows that in FY 2005 there were 27 hospitalizations, 8 observation stays and 331 emergency room visits. The

highest number of injuries are to children between 13 and 15 years old. For comparison, it was suggested that there may be a need for additional statistics regarding bicycle injuries. A copy of the six PowerPoint slides was provided.

Lewis Howe – House Bill 3592 – An Act Relative to Child Safety on ATVs

Lewis clarified that statistics presented above are for ATVs, not dirt bikes. HB3592 was filed by Representative Patrick to ban ATV use for children under 16. The Bill requires registration; safety information distributed at time of sale; restrictions to vehicle size for 16 and 14 year olds; training requirements; a mechanism to levy substantial fines; and makes parents or guardians subject to suspension of driver's license for violations by juveniles. He recommends the bill be modeled after personal watercraft laws. Mr. Howe reported that provisions in the bill are supported by the American Academy of Pediatrics, Association of Orthopedic Surgeons, Prevent Injuries Now (PIN), physicians at Massachusetts General Hospital, Boston Children's Hospital and the American Association of Orthopedic Surgeons among others.

Eleni Varitimos, Chief of Staff, Senator Badour

Eleni continued the discussion regarding HB3592. She explained that the bill is currently in the re-draft process. She reiterated that HB3592 addresses the issues of health, safety, age and machine size restrictions, funding sources, environment and property damage, and requires registration, title and insurance. Under the proposed bill, sellers of OHVs must distribute safety information including state laws, safety requirements and training programs. In addition, no person under 18 may operate an OHV without completing a training program certified by the Registry of Motor Vehicles and no person under 16 may operate an adult-sized vehicle with a larger than 90cc engine. It further stipulates that adult sized ATVs may not be sold for use by persons under 16 and no person under 14 may operate an ATV or snowmobile. If a person violates this section, a report against the parent or guardian will be filed under Section 51A (child neglect laws). If found in violation, they would have their drivers license suspended for 30 days. Upon sale of an OHV, the parent or guardian shall sign an acknowledgement of possible suspension and filing of report under Section 51A.

A public hearing regarding this bill was held in June 2007. It is currently in the re-draft process and from there will move out of Committee to the House of Representatives, to the Senate and then to the Governor.

Pictures were presented of an 8 year old child killed while riding an ATV. Eleni offered her email address for those wishing to contact her or Matthew Dudek (from Transportation Committee Chairman, Representative Wagner's office) directly. Eleni.varitimos@state.ma.us and matthew.dudek@state.ma.us

Frank Frey, Trail Maintenance Program HB3617

This bill was originally filed in 1998. This version of the bill was filed with the Transportation Committee and is currently at the Natural Resources Committee. The bill requires that all OHVs ridden on public lands display a Trails Maintenance Assessment (TMA) decal by NETRA. Revenue from the decals will be collected and held by NETRA for the purpose of trail development and maintenance, enforcement and program administration. In addition to creating

the sticker program the bill calls for stiffer penalties for OHV violations. NETRA proposes fines of at least \$100 but not to exceed \$500, or imprisonment of not more than 60 days or both depending on the nature of the violation. The bill also requires that all operators born after January 1, 1998 must complete an education and safety program.

Bruce Bennett, Ch. 90B, 90C and 323 CMR 30

Copies of various sections of Chapter 90B, C and 323 CMR 30 were distributed. These included suggested revisions to these as suggested by DCR and OELE. Materials included Ch. 21A, §10H-fines and categories of violations; Ch. 90B, §24-lights, reflectors, excessive noise, obnoxious fumes; Ch. 90B § 25-operation on public ways, emergencies, regulations; Ch. 90B §26-Dangerous and prohibited operation, restrictions, operator's license requirement; Ch. 90B §27-accident reports; Ch. 90B § 32-regulations, enforcement, reports of violations; Ch. 90B §34-violations, punishment; Ch. 90C §1-definitions; 323CMR-The use of recreation vehicles and snow vehicles

Chapter 90C directs use of vehicles on public ways. Ch. 90B directs use of any vehicle used for pleasure off-public ways and requires a registration plate be displayed. In 1985, under Ch. 90C, all vehicle violations were decriminalized. Bruce recommends that recreation vehicles be removed from Ch. 90C.

The Office of Environmental Law Enforcement (OELE) would propose new enforcement options which would authorize officers to arrest and tow the vehicle; issue a court summons; and issue non-criminal tickets. They propose that the fines be increased from \$50/\$75 to a minimum of \$100 not to exceed \$500 or up to 60 days in jail, or both. They further recommend that riders receive written land owner's permission to use private property and / or that permission can be granted to club. All operators born after January 1, 1988 will be required to participate in an education and safety course. It was acknowledged that there may be confusion and a low priority for local police to monitor crossing public way violations. It was suggested that rear brake lights be required and added to the regulation.

Section 21 10H provides the ability to write non-criminal citations. Major Bennett stated that where enforcement efforts have been stepped up, the problems have gone away. Their records indicate that of all those OHV riders stopped by OELE, 85% of the riders are in compliance with the laws.

Justin Gilardi, Northeast ATVers

Justin spoke briefly and offered the Northeast ATVers written recommendations, for revising Ch. 90B and Ch. 90C. He suggested that crossing a public way to connect to another trail should not be a criminal offense; and step violations with repeat offenses to a maximum of \$300 or 60 days in jail, or both. He noted that under their proposal all fees and fines shall be dedicated with one half of the monies collected going to Environmental Police for enforcement and one half toward recreational vehicle safety and education.

HB810 – Prohibition of Two Stroke Engines

This Bill is sponsored by Representative Marzilli and prohibits the sale of recreational vehicles containing two stroke engines, including but not limited to snow craft, all-terrain vehicles and watercraft; authorizes the resale of said recreational vehicles. A copy of the bill was distributed.

A brief discussion ensued regarding the excessive noise of two stroke engines and various decibel levels allowed in other states. See “State By State Off-Highway Vehicle Regulations” handout for details.

Discussion and Identification of Proposal Topics

Bill Logue restated our need to identify and gain a clear understanding of the commonalities among all parties in the Group so that we may move toward facilitating a smooth legislative process. Seven concept areas were identified.

1. Education and Training
2. Penalties
3. Registration Licensing, Permitting and Insurance
4. Noise/Sound
5. Funding
6. Age/Size Limitations
7. Operating Under the Influence

The group concentrated the discussion within each of these areas.

1. Education and Training
 - There was a suggestion that certification should be a state sanctioned course rather than one designed by manufacturers. It was pointed out that the boat operators course may be a model to emulate;
 - It was suggested that manufacturers should pay for the required training. Currently riders are paid \$100 from the manufacturer if they complete a safety course. Despite the financial incentive, some riders do not participate in the program;
 - There was some discussion about making an education certificate required for all riders. Some members felt that requiring older riders to take the program was unlikely to be successful but most agreed that mandatory education program for riders under a certain age was reasonable. January 1, 1988 was suggested as a cutoff date for mandatory education. All riders born after that date would be required to participate in the training;
 - It was mentioned that Vermont has a strong training program that is worth exploring as a model.
2. Penalties
 - It was suggested that MA should remove the decriminalization provisions found in Chapter 90C;
 - There was substantial agreement that a spectrum of penalties should be available to officers and judges to ensure that the punishment suits the offense. It was suggested that the punishment for trespass in priority habitats, water supply lands or other especially

sensitive resource areas should be punished more severely. There was substantial agreement that penalties could even include jail time. It was noted that having different tools available for enforcement does not necessarily mean that all will be utilized. It provides ability to fine a first time offender and prosecute more aggressively a repeat offender;

- Need to address motor vehicle trespass laws;
- Create habitat restitution fines;
- Include separate fines for trespass, damage to property and damage to the environment;
- It was pointed out that the Wetlands Protection Act currently carries a \$25,000 fine and up to 2 years in jail. Further discussion of Wetlands Protection Act enforcement should occur;
- It was suggested that OHV violations might lead to attaching points to the operator's or owner's driver's license. It was pointed out that such actions may be overly complicated as they involve the operators insurance. Some members of the legislature have been cautious about creating such penalties. There was also a suggestion that such an approach may be out of proportion with other more serious offenses;
- It was suggested that towing and impounding the vehicle should be included in penalties. It was pointed out that towing does not necessarily mean confiscation. Confiscation of a vehicle or boat requires a particular process and justification.

3. Registration, Licensing, Permitting and Insurance

- Should registration be mandatory? Some expressed opposition to the idea of mandatory registration; particularly if vehicle is solely used outside of MA or on the owner's private property. Others felt that the modest annual registration fee was a small price to pay for riders seeking to support the sport;
- There was substantial agreement that registration fees should be reasonable and dedicated to a fund to support of OHV training, enforcement and the development and maintenance of OHV trails;
- There was some discussion regarding registration reciprocity with other states. It was pointed out that reciprocity may be warranted when both states offer riding opportunities. When there is an imbalance of opportunity between states, the state offering more opportunity loses the revenue to support it while the state with less opportunity gains revenue without investing in opportunities.

4. Noise/Sound

- NETRA requirements for sponsored events are currently stricter than the Commonwealth of MA (NETRA recommends 98 db at 20 inches. Currently MA only restricts motorcycles at 103). No sound levels currently exist in MA for ATV's;
- It was suggested that MA adopt the national guidelines recommended by NOHVCC, the American Motorcycle Association and others. Those standards call for 96 db sound limits measured at 20 inches from the muffler. Nearly all OHV's currently being manufactured meet this standard and most older machines can be maintained to comply with it.

5. Funding Mechanisms

- A variety of potential funding sources were considered including registrations, trail passes, and fines. There was considerable agreement that a combination of approaches to fund enforcement and trail operation activities were necessary;
- As previously noted there was broad agreement that revenues derived from OHV sources should be directed toward OHV education, enforcement and OHV trail development and maintenance;
- It was noted that the Trails Maintenance Assessment decal proposed by NETRA and discussed earlier in the meeting is designed to redirect user revenues to public and private lands for OHV trail development and maintenance;
- It was pointed out that dedicated funds require consistent attention to ensure that they continue to be used for the intended purpose.

6. Age/Size Fit

The issue of age limits or vehicle size limits was acknowledged as an important and controversial topic. The group elected to focus on this issue in its next meeting.

7. Operating Under the Influence

- There was substantial agreement that operating under the influence while driving an OHV should be treated and prosecuted the same as OUI for motor vehicles. There was the suggestion that the offense should be linked to the operator's driver's license. Chapter 90B(b) & Ch. 90B(a)
- It was suggested that OHV OUI should be modeled after the OUI statute for boating.

Bill noted that a number of existing laws may also have influence on these seven topic areas. The committee should keep these in mind during further deliberations.

- Wetlands Protections Act
- Endangered Species Act
- Destruction to Environmental Resources
- Private Landowners Rights
- Trespass

Next Steps / Next Meeting

- Distribute minutes for 9/14/07 meeting
- Draft and distribute agenda for next meeting on 10/12/07

Tasks Prior to Next Meeting

Bruce Bennett will meet with Janet Morrison and others during the week of September 17 to further discuss potential changes to Chapter 90 B and C. That subgroup may develop further suggestions for revising the statute.